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has committed a breach of neutrality.[15] An employer is guilty of a hostile act against a union when he has dealings with materials as the subject matter of labor in the immediate past, future, or in the present manufacture of which there has been "unfairness" to the union. A recent Connecticut case suggests a variation of this formula. *Cohn & Roth Electric Co.* v. *Bricklayers, Masons & Plasterers Local Union No. 1.*[16] Upon the facts of this case it might be maintained that an employer commits a hostile act against a union when he employs a subcontractor who is "unfair" to the union in any of his work. It will be seen that the purely sympathetic strike is at the very end of this road.

As in any branch of the law the historical development of the litigation largely explains the method of treatment. The social interest crept into the struggle while the courts were searching for a criterion with which to measure the conflicting interests of individuals. Vaguely feeling this, the courts tried to recognize it in language adapted to the individual interest. Now that the social significance has become the dominating factor, this language is seriously misleading. Any attempt to suggest the future of this field of the law must clearly distinguish the application of these two principles.[17] As to what purpose of labor the law will recognize in balancing its interest with that of the employer, the fact of the interest of all workingmen in their betterment as a class will inevitably be admitted. This would mean that a strike would be lawful whenever an employer was "unfair" to any labor, or whenever he was connected by his product or by employment with any other employer who was similarly "unfair."[18] In considering what further social damage from the development of the strike and boycott will be considered justified by the end, other factors are involved. It is not merely a question of the value placed upon a highly organized working class with the attendant betterment of conditions, but the law must be convinced that the employment of such drastic means is justified by the absence of any reasonable substitute. At this point we emerge into the open country of economic and political speculation.[19] In such a country the law has never been a pioneer.

PROCEEDINGS *IN FORMA PAUPERIS*. — The California Political Code[1] makes the common law of England, so far as not inconsistent with the

[15] Master Builders Ass'n *v.* Damascio, 16 Colo. App. 25, 63 Pac. 782; Parkinson *v.* Building Trades Council, 154 Cal. 581, 98 Pac. 1027; Gill Engraving Co. *v.* Doerr, 214 Fed. 111; State *v.* Van Pelt, 136 N. C. 633, 49 S. E. 177. See also cases cited in note 10.

[16] See page 494, *infra*.

[17] For a clear conception of the difference, see opinion of Shaw, C. J., in Commonwealth *v.* Hunt, 4 Met. (Mass.) 111.

[18] "Workingmen cannot be compelled to work when by doing so their position as workingmen will be injured simply because if they do not continue their work the manufacturing employer will not be able to sell as large a quantity of material as he otherwise would and thus his good will, trade or business may be affected." Bossert *v.* Dhuy, *supra*.

[19] "The doctrine of the just cause or excuse inevitably operated so as to leave to judges and juries the decision of questions not so much of law and fact as of ethics and economics." GELDART, THE PRESENT LAW OF TRADE DISPUTES AND TRADE UNIONS, 24.

[1] § 4469.

constitution and laws of the state, the rule of decision in all courts. Under the well-settled construction of that provision in other states, English statutes prior to colonization and such English statutes subsequent to colonization, as were received as common law in this country prior to the Revolution, are included in the term "common law" of England.[2] Hence the statutes of Henry VII and Henry VIII [3] as to proceedings *in forma pauperis* would be common law in this country so far as applicable. The former, entitled "A Mean to help and speed Poor Persons in their Suits," provided that the pauper should have writs, subpœnas, counsel and other requisite officers without fee; the latter excused the defeated pauper from paying costs, but provided that the court in its discretion might punish him. It is doubtful whether this meant more than that he was to be punished in the discretion of the court if, having sued *in forma pauperis*, he did not go on and prosecute his action, since his conduct would amount to a fraud on the court, that is, to a contempt. But there are seventeenth-century statements that, where a pauper was non-suited, costs should be taxed and the option given him of discharging them or submitting to be whipped.[4] Blackstone says the latter practice was disused in his time,[5] and according to Tidd this punishment does not appear ever to have been inflicted.[6] As early as 1697, Lord Holt in denying a motion that a non-suited pauper be whipped for failure to pay costs said that he had never known it to be done, observing that the court had no officer to whip the pauper.[7] Even if the power to permit such proceedings rested simply on the statutes cited, and those statutes called for whipping of the non-suited pauper, it would seem that the inapplicable part could be rejected exactly as in case of common-law doctrines of judicial origin.[8] As the election to be whipped is at most a judicial gloss resting on a statement made to the court in a case in the reign of Charles II as to what had been the usual practice,[9] this gloss might obviously be rejected as inapplicable, the more as English decisions and English writers had pronounced it obsolete prior to the Revolution.

The right to sue *in forma pauperis* was doubtless an indulgence arising out of the humanity of the judges, and, indeed, the English courts are agreed that it existed at common law apart from statute, and that the statutes were simply regulatory.[10] These decisions although rendered since the Revolution may well be taken to establish the common law

[2] Patterson *v.* Winn, 5 Pet. 233; Spaulding *v.* Chicago R. Co., 30 Wis. 110; Kreitz *v.* Behrensmeyer, 149 Ill. 496.

[3] 11 HEN. VII, c. 12; 23 HEN. VIII, c. 15.

[4] Munford *v.* Pait, 1 Sid. 261; Anonymous, 2 Salk. 507; Anonymous, 7 Mod. 115.

[5] 3 BLACKSTONE, COM. 400.

[6] 1 TIDD, PRACTICE, 8 ed., 93.

[7] Anonymous, 2 Salk. 507.

[8] Van Ness *v.* Pacard, 2 Pet. 137.

[9] Munford *v.* Pait, 2 Sid. 261: "Et sur inquiry del practice in tiel case fuit certifie que le usual voy est par taper costs & si le cost ne soit pay que le plaintiff sera whip."

[10] Brunt *v.* Wardle, 3 Man. & G. 534, 542, and the cases cited therein. *Cf.* Y. B. 15 EDW. IV, 26*b* (1476): "Note that at the beginning of this term, one John Brown was present to be the presignator for the poor in the Common Pleas and . . . it was said that . . . if any poor man would swear to him that he was not able to pay for the entry of the pleas in the rolls then he ought to enter the pleas without taking anything for his labor, *quod nota*, and this was done by the advice of the justices."

for our purposes.[11] Hence those courts [12] which hold that proceedings *in forma pauperis* can be had only where authorized by state statute would seem to be in error, and the California court,[13] correct in its decision that such proceedings are inherent in common-law courts of record, and exist unless expressly taken away by statute. That the California Code of Civil Procedure [14] specifically provides that in justices' courts payment of certain costs in advance shall not be required of paupers is no argument that the legislature intended thereby to restrict courts of record in their common-law power. Justices' courts are dependent upon the legislature for their authority, and such a provision is nothing more than conferring upon them in part that which belongs inherently to courts of record.

It is suggested in the opinion of the California court that as the section of the Political Code was adopted in 1850, general acts of Parliament in amendment or improvement of the common law up to that date may be common law in California. A similar argument was made in *Williams* v. *Miles* [15] and rejected by the court. In the present case the suggestion is a mere *dictum* and is disclaimed by two of the justices in a concurring opinion.

RECENT CASES

ADMINISTRATIVE LAW — POWER OF ADMINISTRATIVE OFFICER TO REVERSE A PRIOR RULING. — The federal Meat Inspection Law (34 STAT. 676) provides that manufacturers may market meat products under a trade name which is not deceptive and is approved by the Secretary of Agriculture. The Secretary of Agriculture approved plaintiff's trade name, "Cremo Oleomargarine," under which plaintiff thereafter extensively advertised and sold his product. Seven years later the secretary withdrew his approval and notified plaintiff to discontinue the use of the trade name. *Held*, that the secretary having approved the name he cannot reverse his ruling. *Brougham et al.* v. *Blanton Mfg. Co.*, 243 Fed. Rep. 503.

Ordinarily determinations of fact by administrative agencies within their proper jurisdiction are conclusive. *United States* v. *Ju Toy*, 198 U. S. 252; *Bates and Guild Co.* v. *Payne*, 194 U. S. 106; *Public Clearing House* v. *Coyne*, 194 U. S. 497; *Hilton* v. *Merritt*, 110 U. S. 97. But a court may review such determinations where parties interested have not been given an opportunity to be heard, or where there has been fraud or an abuse of discretion, so that there is a denial of due process of law. *Turner* v. *Williams*, 194 U. S. 279; *Chin Yow* v. *United States*, 208 U. S. 8; *The Japanese Immigrant Case*, 189 U. S. 86. The secretary's finding that the name "Cremo Oleomargarine" is deceptive is as much a finding of fact as his prior decision that it was not, and it should not be reversed in the absence of a denial of due process of law. The prior contrary ruling is not in itself sufficient evidence of fraud or abuse of discretion to establish a denial of due process.

The successful application of statutory law by administrative agencies depends almost entirely on the ability of such agencies to discriminate, unhampered by precedent, between subtle differences of fact and circumstance.

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[11] Chilcott *v.* Hart, 23 Colo. 40; Williams *v.* Miles, 68 Neb. 463. See POPE, "English Common Law in the United States," 24 HARV. L. REV. 6.

[12] Hoey *v.* McCarthy, 124 Ind. 466; Campbell *v.* Chicago R. Co., 23 Wis. 490.

[13] Martin *v.* Superior Court, SAN FRANCISCO RECORDER, October 18, 1917.

[14] § 91.

[15] 68 Neb. 463, 470.